

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frank Montgoris	Team: APU	CCRB Case #: 201706371	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/29/2017 10:35 PM	Location of Incident: Front of 195 Kingston Avenue	Precinct: 77	18 Mo. SOL 1/29/2019	EO SOL 1/29/2019	
Date/Time CV Reported Sun, 07/30/2017 12:15 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/04/2017 1:11 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Craig	26996	945623	077 PCT
2. SGT Avinash Patel	05322	940551	077 PCT
3. POM Umar Khatab	20552	952929	077 PCT
4. POM Alex Viera	14168	945080	077 PCT
5. POM Matthew Rosiello	20090	951180	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Roger Quintero	05330	943706	077 PCT
2. POM Matthew Ondrejack	02668	956989	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Alex Viera	Abuse: Police Officer Alex Viera stopped the vehicle in which § 87(2)(b) and individuals were occupants.	
B.POM Umar Khatab	Abuse: Police Officer Umar Khatab stopped the vehicle in which § 87(2)(b) and individuals were occupants.	
C.POM Alex Viera	Abuse: Police Officer Alex Viera frisked § 87(2)(b)	
D.POM Alex Viera	Abuse: Police Officer Alex Viera searched the vehicle in which § 87(2)(b) and individuals were occupants.	
E.POM Patrick Craig	Force: Police Officer Patrick Craig used physical force against § 87(2)(b)	
F.POM Patrick Craig	Discourtesy: Police Officer Patrick Craig spoke discourteously to § 87(2)(b)	
G.POM Umar Khatab	Abuse: Police Officer Umar Khatab searched the vehicle in which § 87(2)(b) and individuals were occupants.	
H.POM Matthew Rosiello	Abuse: Police Officer Matthew Rosiello searched the vehicle in which § 87(2)(b) and individuals were occupants.	

Officer(s)	Allegation	Investigator Recommendation
I.POM Umar Khitab	Force: Police Officer Umar Khitab used physical force against § 87(2)(b)	
J.POM Alex Viera	Force: Police Officer Alex Viera used physical force against § 87(2)(b)	
K.POM Alex Viera	Discourtesy: Police Officer Alex Viera spoke discourteously to § 87(2)(b)	
L.POM Patrick Craig	Abuse: Police Officer Patrick Craig refused to provide his name to § 87(2)(b)	
M.SGT Avinash Patel	Abuse: Sergeant Avinash Patel issued an improper summons to § 87(2)(b)	

### Case Summary

On July 30, 2017, § 87(2)(b) filed this complaint with IAB on behalf of herself and her 23-year-old son, § 87(2)(b) generating log number 2017-29139. The CCRB received this case on August 4, 2017.

Neither § 87(2)(b) nor § 87(2)(b) the two victims in this case, participated in this investigation under the advice of their attorney, § 87(2)(b). Additionally, § 87(2)(b)'s daughter and a witness to this incident, was unavailable to the investigation. However, because of the presence of video footage, this case was fully investigated.

On July 29, 2017, PO Alex Viera and PO Umar Khitab, from the 77<sup>th</sup> Precinct, conducted a stop of an Uber vehicle belonging to an unidentified individual and containing § 87(2)(b) and an additional unidentified passenger, as a result of a radio run involving a firearm (Allegations A and B: Abuse of Authority, § 87(2)(g)). During the stop, PO Viera frisked § 87(2)(b) (Allegation C: Abuse of Authority, § 87(2)(g)) and searched the Uber vehicle (Allegation D: Abuse of Authority, § 87(2)(g)). Backup officers from the 77<sup>th</sup> Precinct then arrived on scene. PO Patrick Craig punched § 87(2)(b) in the face (Allegation E: Force, § 87(2)(g)) and spoke discourteously to § 87(2)(b) (Allegation F: Discourtesy, § 87(2)(g)). PO Khitab and PO Rosiello also searched the Uber vehicle (Allegations G and H: Abuse of Authority, § 87(2)(g)). PO Khitab pushed § 87(2)(b) (Allegation I: Force, § 87(2)(g)). PO Viera pulled § 87(2)(b) into the police vehicle by his braids (Allegation J: Force, § 87(2)(g)) and spoke discourteously to § 87(2)(b) (Allegation K: Discourtesy, § 87(2)(g)). PO Craig then refused to provide his name to § 87(2)(b) (Allegation L: Abuse of Authority, § 87(2)(g)). § 87(2)(b) was issued a criminal summons for disorderly conduct as a result of this incident (Allegation M: Abuse of Authority, § 87(2)(g)). § 87(2)(b) and § 87(2)(b) who were inside of § 87(2)(b)'s third floor apartment at § 87(2)(b) were witnesses to this incident.

IAB Group 54 conducted a concurrent investigation into this incident. As of January 30, 2018, that investigation was still ongoing.

This case was added to the Sensitive Case List because of media coverage that it received in the Daily News. There were two cell phone videos obtained for this incident. The first video, obtained from IAB and recorded by § 87(2)(b) using her cell phone, and a second video, recorded by an unidentified individual and obtained from § 87(2)(b)'s Facebook profile. The relevant portions of this video were edited via Snag-It (Board Reviews 01 and 02).

### Findings and Recommendations

**Allegation A – Abuse of Authority: Police Officer Alex Viera stopped the vehicle in which § 87(2)(b) and individuals were occupants.**

**Allegation B – Abuse of Authority: Police Officer Umar Khitab stopped the vehicle in which § 87(2)(b) and individuals were occupants.**

§ 87(2)(g).

It is undisputed that § 87(2)(b) a black male wearing a yellow t-shirt, was stopped by PO Viera and PO Khitab while inside of the Uber vehicle. It is further undisputed that the unidentified complainant on the bicycle, who the officers encountered prior to stopping § 87(2)(b) was not present during the stop.

§ 87(2)(b) and § 87(2)(b) both alleged that, by the time they looked out the window of § 87(2)(b)'s apartment, the stop had already commenced (Board Reviews 03 and 04).

In the Facebook cell phone video, which is recorded from street level, § 87(2)(b) is predominantly seen in the video, appearing to be a black male with braids, and wearing a lightly-colored yellow shirt. In the same video, PO Craig is heard talking with § 87(2)(b) and other unidentified individuals, and states, "Three different people saw a guy with a white t-shirt." After multiple civilians are heard telling PO Craig that § 87(2)(b)'s shirt is yellow, PO Craig later states, "Yes. It is – it is, a very light yellow. Yes, you're right" (Board Review 02).



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PO Viera testified that he and PO Khitab received a radio run for either a white or Hispanic male with a firearm at 216 Kingston Avenue. After a canvass of the area which took approximately 20 minutes, the officers were waved down by an unidentified civilian on a bicycle who alleged that he had gotten into an argument six or seven minutes prior with a 6' tall male individual, who had an Indian skin tone, braids, was wearing a white or yellow t-shirt, and was carrying a firearm in his hand. The unidentified individual further told PO Viera that he had observed the perpetrator walking on Park Place towards Kingston Avenue, possibly hiding in one of the buildings on Park Place and Kingston Avenue. The unidentified complainant refused to provide his name or contact information, and then left the scene. PO Viera and PO Khitab then went to the intersection provided by the unidentified civilian, and PO Viera observed § 87(2)(b) exit 195 Kingston Avenue, "casing" the block by looking left and right, and walked with his hands in his pockets towards the Uber vehicle. There were no additional actions by § 87(2)(b) that raised PO Viera's suspicions of him. The officers then pulled the Uber vehicle over in front of 195 Kingston Avenue, initiating the stop of § 87(2)(b). PO Viera described § 87(2)(b) as a 6'2" tall black male, who wore a yellow t-shirt and red pants, and that his height, the color of his shirt, and his braids were what fit the unidentified complainant's description. PO Viera acknowledged not attempting to find the unidentified civilian on the bicycle to confirm § 87(2)(b)'s identity (Board Review 05).

PO Khitab stated that the officers received multiple calls for a male individual with a firearm at 216 Kingston Avenue, with the only description coming over describing the perpetrator as a white male. While conducting the 20-minute canvass, the officers encountered the unidentified civilian, who spoke to PO Viera outside of the police vehicle. PO Khitab did not hear the contents of their conversation, but overheard PO Viera relay the description of a 6' tall Indian male, who had a white t-shirt, cornrows, and who was walking down Kingston Avenue towards Park Place, to Sgt. Patel via a phone call. PO Viera initially pointed § 87(2)(b) out to PO Khitab, and PO Khitab then observed § 87(2)(b) who he described as a 6' tall black male, who had dreadlocks or cornrows, a white t-shirt, and beige pants. PO Khitab was aware of the discrepancy in descriptions between the radio run and the unidentified civilian, but noted that the decision was made to stop § 87(2)(b) because he had fit the civilian's description (Board Review 06).

Sgt. Patel, who was in a different vehicle than PO Viera and PO Khitab, testified that, while canvassing the area, he received a phone call from PO Viera, informing him that he had spoken to a witness who had interacted with the perpetrator and that the perpetrator was travelling

on Kingston Avenue towards Park Place. Sgt. Patel initially stated that PO Viera hung up before providing him with a description, but later stated that he believed PO Viera did provide a description that he could not recall (Board Review 16).

Two 911 calls were placed, both at 10:18 p.m. according to the Audio Recordings Heading, alleging that there was a male individual with a firearm. The first caller, whose name was never obtained, described the perpetrator as a Hispanic male with a white shirt and khaki pants, who was near a deli on Kingston Avenue and Sterling Place. The second caller, who identified himself only as “Johnson,” described the suspect as a white male with a white t-shirt and a hat outside of 216 Kingston Avenue (Board Reviews 07, 08, and 09).

The Stop Report, generated by PO Viera, noted that upon responding to the radio run, officers were approached by a civilian on a bicycle who described the perpetrator as a 6’2” tall male in his 20s, wearing a white or yellow t-shirt and khaki pants. No racial description was provided in the description. The Stop Report indicated that § 87(2)(b) fit the description provided by the witness, and described § 87(2)(b) as a black male wearing a yellow t-shirt (Board Review 10).

PO Viera’s memo book entries for the incident noted that the radio run for the job described the perpetrator as a white or Hispanic male, but that the civilian on the bicycle, who had refused to provide his name, described the perpetrator as a male with an Indian or medium skin tone, wearing a white or yellow t-shirt. PO Khitab’s memo book entries noted the radio run described the perpetrator to be only a white male, but that the civilian on the bicycle described the perpetrator as a 6’ tall Indian male with a white shirt and cornrows (Board Reviews 11 and 12).

Reasonable suspicion can be established when information supplied by an unidentified citizen is independently corroborated with information given by other unidentified citizens. People v. Arthurs, 24 N.Y.2d 688 (1969). Reasonable suspicion can also be established with information supplied by a physically present, but unidentified, citizen, when officers can corroborate or substantiate some detail or aspect of the information. People v. Letriz, 103 A.D.3d 446 (2013). An officer may stop an individual when he reasonably suspects that a person has committed, is committing, or is about to commit a crime. People v. DeBour, 40 N.Y.2d 210; 352 N.E. 2d 562 (1976) (Board Reviews 13, 14, and 15).

While there were three individuals in the Uber vehicle who were stopped by PO Viera and PO Khitab, the analysis of the stop predominantly surrounds § 87(2)(b) as he was the subject of the stop, and the officers only stopped the Uber vehicle containing the other two unidentified individuals because § 87(2)(b) had entered it.

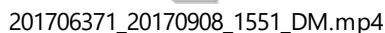
§ 87(2)(b), § 87(2)(g)

Nevertheless, PO Khitab said in his statement that he and PO Viera operated based on the information provided by the unidentified civilian – a conclusion also corroborated by the Stop

[REDACTED]

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

In § 87(2)(b)'s cell phone video of the incident, PO Craig and PO Rosiello are both seen patting down § 87(2)(b)'s right leg and right waist from the 18-second mark to the 25-second mark. PO Craig is then seen taking § 87(2)(b)'s hat off, looking inside of it, and placing it on the trunk of the vehicle. Though it is unclear in the video as to whether § 87(2)(b) is handcuffed, his hands are seen behind his back, and the frisks occur after PO Craig punches § 87(2)(b) (Board Review 01).



At the one-minute and 25-second mark of the Facebook video, § 87(2)(b) is heard stating, “Why is he even putting hands on me? I didn’t do nothing wrong! I didn’t do nothing! I got out, I showed him I didn’t have no weapons, and I got back in the car” (Board Review 02).



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PO Viera testified that, upon explaining to § 87(2)(b) that they were investigating a firearm call, § 87(2)(b) responded by telling PO Viera, “Fuck you. I don’t have a fucking gun.” PO Viera asked § 87(2)(b) to step out of the vehicle, and § 87(2)(b) complied. Upon stepping out, § 87(2)(b) placed his right hand behind his back, not visible to PO Viera, making PO Viera believe that he was holding onto something. He asked § 87(2)(b) to show him his hands, and § 87(2)(b) complied. PO Viera then patted § 87(2)(b) s front jeans pockets down for weapons, and noted that he did so because of the nature of the radio call, and because of § 87(2)(b) s cursing that he did not have a weapon. PO Viera never mentioned that § 87(2)(b) ever lifted his shirt and showed his waistband at any point during the incident. He did not recall whether he observed any bulges on § 87(2)(b) and denied knowing § 87(2)(b) or having any knowledge of § 87(2)(b) s prior arrests or convictions prior to this incident (Board Review 05).

PO Craig testified that, as he was parking his police vehicle on scene he observed PO Viera attempt to frisk § 87(2)(b) but § 87(2)(b) pushed his hands away. § 87(2)(b) then pushed PO Viera a second time, but PO Craig did not recall if he had pushed his hands a second time or a different part of PO Viera’s body. PO Craig never saw § 87(2)(b) visually show his waistband to officers or take part in a 360-degree turn. Later, after § 87(2)(b) was handcuffed, PO Craig acknowledged frisking § 87(2)(b) s legs, body, and arms, and took off § 87(2)(b) s hat to see if there was a gun inside. PO Craig noted that, he took these actions because he believed § 87(2)(b) to be under arrest. He did not remember if any other officer had frisked § 87(2)(b) (Board Review 17).

PO Rosiello denied seeing § 87(2)(b) frisked prior to being handcuffed, and initially denied frisking him after he had been handcuffed. PO Rosiello believed that another officer had frisked § 87(2)(b) but did not ultimately recall. PO Rosiello noted that he believed § 87(2)(b) to be under arrest because of the resistance he displayed, but also noted that this was not discussed amongst the officers on scene. After being presented with cell phone footage of the incident showing him frisk § 87(2)(b) s waistband and leg, PO Rosiello acknowledged doing so because he fit the description of the perpetrator, had his hand buried inside of his waist, as further discussed below, and because he believed § 87(2)(b) to be under arrest at this point (Board Review 19).

Sgt. Patel, who arrived while § 87(2)(b) was outside the vehicle and talking with PO Viera, testified that he instructed the officers to handcuff § 87(2)(b) and noted in his interview that he made the decision for safety purposes because his behavior made Sgt. Patel unsure whether he was emotionally disturbed or if he was simply upset at being stopped. He also noted that § 87(2)(b) had not been frisked up to this point, and was only frisked from the waistband down after he was handcuffed - though Sgt. Patel did not recall who frisked him (Board Review 16).

PO Khitab denied personally observing any officer frisk § 87(2)(b) during the incident, and denied seeing the process in which § 87(2)(b) was removed from the vehicle, noting that he was on the opposite side of the vehicle talking to the unidentified driver. PO

Ondrejack believed § 87(2)(b) was frisked, but did not recall by whom, and testified that § 87(2)(b) was already standing against the vehicle at the time of his arrival (Board Reviews 06 and 18).

The Stop Report generated by PO Viera indicated that § 87(2)(b) was frisked because of a “hard object resembling [a] weapon,” and because § 87(2)(b) was “known to carry weapons” (Board Review 10).

An officer may frisk an individual when he independently reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed. People v. DeBour, 40 N.Y.2d 210; 352 N.E. 2d 562 (1976). A frisk is improper if it is conducted based on a hand movement toward the waistband without the presence of a bulge. People v. Miller, 121 A.D.2d 335 (1986). A frisk requires reliable knowledge of facts providing reasonable basis for suspecting that the individual to be frisked is armed and dangerous. People v. Russ, 61 N.Y.2d 693 (1983) (Board Reviews 15, 28, and 29).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)



**Allegation D – Abuse of Authority: Police Officer Alex Viera searched the vehicle in which § 87(2)(b) and individuals were occupants.**

**Allegation G – Abuse of Authority: Police Officer Umar Khitab searched the vehicle in which § 87(2)(b) and individuals were occupants.**

**Allegation H – Abuse of Authority: Police Officer Matthew Rosiello searched the vehicle in which § 87(2)(b) and individuals were occupants.**

It is undisputed that the Uber vehicle was searched during the incident. It is also undisputed that none of the officers interviewed obtained the license plate of the vehicle, or the names and contact information for the unidentified driver and the unidentified additional passenger.

The investigation served a subpoena to Uber for contact information for the driver of the vehicle involved, as well as the additional passenger in the vehicle. However, a representative from Uber contacted the CCRB and stated that searches of the Uber database yielded negative results for any driver or passenger information. Therefore, without any additional identifying information, the investigation could not identify either the driver or the second passenger. Furthermore, § 87(2)(b) did not provide a statement to the investigation, the cell phone videos did not fully capture the vehicle search, and neither § 87(2)(b) nor § 87(2)(b) could speak to consent or movements inside of the vehicle (Board Reviews 01, 02, 03, 04, 30; See IAs).

PO Viera testified that he asked the unidentified driver if he could search the area of the vehicle where § 87(2)(b) was sitting, and the driver replied, “Yeah, go ahead.” PO Viera then entered the vehicle from the rear passenger’s door, and searched the floor and seat (Board Review 05).

PO Khitab acknowledged searching the area of § 87(2)(b)’s seat and the floor, not recalling whether he searched between the seats. He testified that he spoke to the unidentified driver of the vehicle, and upon explaining that he was not the subject of the stop, the driver replied, “No problem, officer. I’m here. Anything you need, you got it.” He did not personally obtain consent to search the vehicle, and did not know of any officer requesting consent. PO Khitab noted that he searched the vehicle because he had previously found firearms on prior occasions hidden inside various areas of vehicles (Board Review 06).

PO Rosiello did not remember personally searching the vehicle, and was unaware of any conversation during the stop regarding consent to search the vehicle (Board Review 19).

§ 87(2)(b), § 87(2)(g)

**Allegation E – Force: Police Officer Patrick Craig used physical force against § 87(2)(b)**

It is undisputed that PO Craig punched § 87(2)(b) once in the face, and that § 87(2)(b) had his hands behind his back, but was not handcuffed, at the time of the punch. It is also undisputed that § 87(2)(b) had his back against the vehicle, and was surrounded by multiple officers, at the time of the punch.

Both § 87(2)(b) and § 87(2)(b) who both acknowledged seeing the punch, denied that § 87(2)(b) provided any active resistance at the time of being punched, and alleged that § 87(2)(b) was being physically held by multiple officers when PO Craig punched him (Board Reviews 03 and 04).

§ 87(2)(b)'s cell phone video, which is recorded from her third floor apartment, begins with six individuals facing § 87(2)(b) who has his back against the vehicle and is facing the general direction of the frame. PO Ondrejack is seen standing adjacent to § 87(2)(b)'s left shoulder, while PO Rosiello is seen directly in front of § 87(2)(b) with his hands around his body. § 87(2)(b)'s hands appear to be behind his back, but his hands are not visible to the frame. § 87(2)(b) is seen making subtle movements with his upper body for the first two seconds of the video, and PO Craig, PO Ondrejack, and PO Rosiello all appear to be physically grabbing at § 87(2)(b)'s arms. At the three-second mark in the video, PO Craig, who is standing adjacent to § 87(2)(b)'s right shoulder, is seen punching § 87(2)(b) once in the face. At the time of the punch, Sgt. Roger Quintero, PO Khitab, and Sgt. Patel are all seen in the immediate vicinity of § 87(2)(b) (Board Review 02).



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PO Craig, who acknowledged knowing § 87(2)(b) from prior arrests and interactions with him, testified that he and PO Rosiello grabbed § 87(2)(b)'s right arm and left arm, respectively, and that § 87(2)(b) responded by placing both of his hands behind his back and inside of his waistband. PO Craig tried to pull out § 87(2)(b)'s hands for approximately 20 to 30 seconds, which was unsuccessful, and then observed § 87(2)(b) slightly jerk his body in a forward motion. PO Craig believed that, with this movement, § 87(2)(b) was pulling out a gun. Through a natural reaction, PO Craig responded by punching § 87(2)(b) once in the face. PO Craig noted that, § 87(2)(b)'s verbal uncooperativeness at the onset of his arrival, stating, "I don't have a gun," as well as his lack of cordiality on scene, which he noted was different than his previous interactions with § 87(2)(b) raised his suspicions that § 87(2)(b) possessed a weapon and also led to PO Craig's strike (Board Review 17).

PO Rosiello testified that, as soon as § 87(2)(b) stepped out of the vehicle, he placed his right hand inside of his waistband, near his right hip and close to his back, appearing that he was "digging" for something. PO Rosiello placed both of his hands around § 87(2)(b)'s waist, and was able to place one handcuff on § 87(2)(b)'s left wrist while trying to pull his right arm out from inside of his waist. He believed PO Craig was also pulling at § 87(2)(b)'s right arm, but § 87(2)(b) was moving his shoulders back and forth to pull away from the officers for approximately one minute. PO Rosiello did not recall § 87(2)(b) making a jerk forward with his body (Board Review 19).

PO Matthew Ondrejack, a backup officer, stated that, at the time of his arrival, § 87(2)(b) was up against the vehicle with his hands open and at the bottom of his back towards his waist, approximately six inches or more from each other. PO Ondrejack approached § 87(2)(b)'s left side, while PO Craig was on his right side, forming a circle around § 87(2)(b) with one or two other officers. After approximately 20 to 30 seconds of trying to get § 87(2)(b) handcuffed, PO Ondrejack observed PO Craig punch § 87(2)(b) in the head. PO Ondrejack denied that § 87(2)(b) reached for anything, and did not recall seeing § 87(2)(b) make any quick jerk forward with his body. PO Ondrejack noted that § 87(2)(b)

§ 87(2)(b)'s hands were visible, and were never inside of his waist. Aside from stiffening his arms, PO Ondrejack denied that § 87(2)(b) provided any additional physical resistance (Board Review 18).

PO Viera, PO Khitab, and Sgt. Patel all denied personally seeing PO Craig punch § 87(2)(b) during the incident (Board Reviews 11, 12, and 16).

An officer may use force to reasonably ensure the safety of a member of the service or a third person, to take a lawfully arrested person into custody, or to prevent one's escape from custody. Some factors to consider in determining when to use force are the actions taken by the subject, the immediacy of the perceived threat or harm to others, whether the subject is attempting to evade arrest by flight, the number of subjects compared to the number of members of service, and whether the subject is actively resisting. NYPD Patrol Guide, Procedure 221-01 (Board Review 20).

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**Allegation F – Discourtesy: Police Officer Patrick Craig spoke discourteously towards**

**Allegation K – Discourtesy: Police Officer Alex Viera spoke discourteously towards** § 87(2)(b)

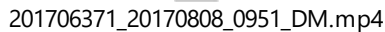
§ 87(2)(b) alleged that, after PO Craig punched § 87(2)(b) he screamed, “That’s the last time I’m going to tell you. That’s a direct fucking order.” She denied hearing any additional profanities from any officer during the incident (Board Review 03). § 87(2)(b) denied hearing any officer use any profanity during the incident (Board Review 04).

At the three-second mark in § 87(2)(b)'s cell phone video, PO Craig is seen striking § 87(2)(b) and immediately after, he is heard yelling, "Put your hands behind your back! That's the last time! I'm telling you! I'm giving you a fucking direct order" (Board Review 01).



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At the two-minute and two-second mark in the Facebook video, PO Craig's lower body is in the frame, with the rest of his upper body continuously shown in and out of the frame, and he is seen and heard stating, "You know what? Someone film him acting like an animal. Simple as that. We'll cover ourselves. You're acting like an idiot, dude." Later in the video, at the two-minute and 13-second mark, PO Viera is seen leaning into the rear passenger's side of the police vehicle, with his back to the frame, and is heard telling § 87(2)(b) who is in the backseat of the vehicle, "Stupid motherfucker." The initial voice who uttered the "animal" comment is then immediately heard stating out loud, "Fucking so stupid" (Board Review 02).



Though the specifics of the officers' initial attempts to get § 87(2)(b) into handcuffs were not captured on video, had PO Craig been unsuccessful in securing the handcuffs on him for the 20 to 30 seconds, as he alleged, his use of profanity in an attempt to gain § 87(2)(b)'s compliance would have been justified. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation I – Force: Police Officer Umar Khitab used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that, while § 87(2)(b) was being escorted to the police vehicle, § 87(2)(b) followed the officers, getting to within two to three feet of the vehicle and approximately five feet from § 87(2)(b). PO Rosiello then pulled § 87(2)(b) away from the vehicle by her left arm while PO Khitab simultaneously pushed her on her right front side of her body, away from the vehicle, causing her to stumble but not fall. § 87(2)(b) could not hear any commands the officers may have been issuing to § 87(2)(b) prior to the push (Board Review 03).

§ 87(2)(b) alleged that § 87(2)(b) followed § 87(2)(b) to the police vehicle, getting approximately five feet away. She did not hear any officers issue § 87(2)(b) any commands, but observed PO Khitab push her with his forearm in her chest, causing her to stumble (Board Review 04).

At the two-minute and 47-second mark in § 87(2)(b)'s cell phone video, § 87(2)(b) is seen approaching the rear driver's side door of the police vehicle, where PO Ondrejack and Sgt. Quintero are holding § 87(2)(b). PO Khitab is seen engaging with § 87(2)(b) who is seen approximately one arm's length away from § 87(2)(b) but nothing specific is audible in the video. At the three-minute mark, Sgt. Quintero and PO Rosiello, who are both facing § 87(2)(b) are seen pointing towards the sidewalk, away from the police vehicle. At the three-minute and ten-second mark, PO Rosiello's right hand is seen holding onto § 87(2)(b)'s left arm while § 87(2)(b) continues facing PO Khitab and the police vehicle. At the three-minute and 14-second mark, PO Rosiello is seen grabbing § 87(2)(b)'s right arm with his left hand, and beginning to guide her away from the vehicle, in the direction he had previously pointed. § 87(2)(b) appears to plant her right foot and push her upper body back briefly in defense of PO Rosiello's action, and PO Khitab then pushes her in her back with his left hand, causing her to stumble away from the vehicle (Board Review 01).



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The Facebook cell phone video does not capture any of the verbal or physical interaction between § 87(2)(b) and officers (Board Review 02).

PO Khitab testified that § 87(2)(b) followed § 87(2)(b) to the police vehicle while screaming, but he did not recall what she was saying. She was approximately three to four feet away from § 87(2)(b) and PO Rosiello then put his open palm on her forearm and said, "Do me a favor, let me talk to you. Come here, let me talk to you." PO Khitab then told § 87(2)(b) "Do me a favor, walk away from my stop." After telling her three to five times to move back, § 87(2)(b) eventually walked away on her own volition. PO Khitab denied pushing § 87(2)(b) away from the vehicle. When presented with video footage, PO Khitab maintained that he did not recall making physical contact with § 87(2)(b) at any point (Board Review 12).

PO Rosiello stated that he could not estimate how close § 87(2)(b) got to the police vehicle, but that he asked her to move back three or four times. PO Rosiello denied that she was interfering with the officers, but that she was "making § 87(2)(b) crazy" with what she was saying towards him - the contents of which he could not recall. PO Rosiello held § 87(2)(b) by her arm and guided her away in an escort fashion, but did not recall PO Khitab pushing her away from the vehicle (Board Review 06).



appearing into the frame from the area of the rear driver's side door and grabs § 87(2)(b)'s braids in an apparent attempt to pull his head towards the vehicle. § 87(2)(b)'s head is seen turning sideways, and, at the three-minute and 44-second mark, § 87(2)(b) disappears from the frame and into the police vehicle. PO Viera is then seen exiting the vehicle from the rear passenger's side door. The Facebook video did not capture this interaction (Board Reviews 01 and 02).



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PO Viera testified that § 87(2)(b) who was at the rear driver's side door of the police vehicle, said, "I'm not getting inside of the vehicle." PO Viera spoke to § 87(2)(b) and told him that the faster the process gets done, the faster he would be able to go home. § 87(2)(b) then voluntarily got in the vehicle, and PO Viera denied that he or any other officer pulled him into the vehicle by his braids, and denied using any force to get § 87(2)(b) inside. Upon being presented with video footage showing him getting into the back of the police vehicle prior to § 87(2)(b) going inside, PO Viera noted that he entered the vehicle to clear off the backseat. After viewing the footage which shows a hand pulling § 87(2)(b) by his braids, PO Viera did not acknowledge seeing this, and maintained that he did not pull § 87(2)(b) by his hair (Board Review 05).

PO Craig testified that approximately three officers had to physically place § 87(2)(b) into the vehicle head-first, though he could not specify whether they pulled, pushed, or picked § 87(2)(b) up by his arms to accomplish this. PO Craig did not remember any officer pulling § 87(2)(b) by his braids (Board Review 17).

PO Ondrejack stated that he and Sgt. Quintero escorted § 87(2)(b) to the vehicle, but § 87(2)(b) refused to get inside for approximately one minute. He did not know what ultimately made § 87(2)(b) get inside the vehicle, but did not remember an officer pulling him by his braids, or any force being used at all to get him into the vehicle (Board Review 18).

PO Rosiello, PO Khitab, and Sgt. Patel all testified that they did not observe the process of getting § 87(2)(b) into the vehicle. Sgt. Patel initially noted that an officer had pulled him into the vehicle from inside, but later retracted this statement, claiming that it was just "speculation" (Board Reviews 06, 16, and 19).

An officer may use force to reasonably ensure the safety of a member of the service or a third person, to take a lawfully arrested person into custody, or to prevent one's escape from custody. Some factors to consider in determining when to use force are the actions taken by the subject, the immediacy of the perceived threat or harm to others, the number of subjects compared to the number of members of service, and whether the subject is actively resisting. NYPD Patrol Guide, Procedure 221-01 (Board Review 20).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

**Allegation L – Abuse of Authority: Police Officer Patrick Craig refused to provide his name to § 87(2)(b)**

According to the IAB Log, which was corroborated by the Facebook video, it is undisputed that § 87(2)(b) who was ultimately uncooperative with the investigation, requested PO Craig’s name. It is further undisputed that PO Craig did not provide his name at the time of this request, instead directing § 87(2)(b) to the 77<sup>th</sup> Precinct stationhouse.

At the four-minute and 33-second mark in the Facebook video, during a conversation with PO Craig that began at the three-minute and 17-second mark, a female voice out of frame is heard stating, “Sir, what’s your name? What’s your name?” PO Craig responds, “At the precinct, we’ll answer all the questions, okay? We’re going to be over there.” PO Craig is then seen walking away from the frame, and the frame moves in an opposite direction than the officers. PO Craig is never heard providing his name in the video (Board Review 02).



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PO Craig acknowledged not providing his name upon request because there were five or six other officers present and he did not want to “list off names” – though PO Craig did not know if § 87(2)(b) asked for any other officers’ names aside from his own. Instead, PO Craig told § 87(2)(b) to go to the 77<sup>th</sup> Precinct if they wanted the names or shields of officers, as they would be back there with § 87(2)(b) because, to his knowledge, § 87(2)(b) was being arrested. However, PO Craig acknowledged that the officers ultimately released § 87(2)(b) three blocks away with a summons (Board Review 17).

Police officers must clearly state, or otherwise provide, their shield number to anyone who requests them to do so. An officer must also allow the person ample time to note this information. NYPD Patrol Guide, Section 203-09 (Board Review 22).

§ 87(2)(b), § 87(2)(g)



**Allegation O – Abuse of Authority: Sergeant Avinash Patel authorized the issuance of a summons to § 87(2)(b)**

It is undisputed that Sgt. Patel had instructed PO Viera to issue a disorderly conduct summons to § 87(2)(b). It is further undisputed that, by the time § 87(2)(b) was escorted to the police vehicle, he was handcuffed and multiple civilians, including § 87(2)(b), had already gathered around the police interaction. Finally, it is undisputed that the summons was dismissed, as per the Kings County Criminal Summons office.

The two cell phone videos of this incident, which overlap beginning at the one-minute and 44-second mark of § 87(2)(b)'s video, show § 87(2)(b) loudly making numerous statements to the officers explaining that he did not do anything wrong, and asking for the officers to get his mother. While being taken to the police vehicle, § 87(2)(b) is heard yelling, “This nigga just punched me right in my fucking face. This nigga right here punched me in my fucking face. He punched me in my fucking face.” Later, when he is escorted to and outside the police vehicle, § 87(2)(b) is heard yelling, “I didn’t do nothing wrong. What am I going in the car for? Why is he even putting hands on me? I didn’t do nothing wrong. I didn’t do nothing! I got out, I showed him I didn’t have no weapons, and I got back in the car! So why are you even hitting me?” (Board Reviews 01 and 02).



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Sgt. Patel initially testified that he considered § 87(2)(b) under arrest for disorderly conduct at the time he instructed his officers to handcuff him. However, he later retracted that statement, stating that, when § 87(2)(b) was handcuffed and escorted to the police vehicle, he still did not consider him to be under arrest, and only wanted him to be driven down the block to get away from the hostility of the crowd that had formed around the interaction. Once § 87(2)(b) was driven down the block, he met with PO Viera and the other officers about their next course of action. Sgt. Patel concluded that § 87(2)(b) was acting disorderly because his demeanor and behavior had caused a crowd to gather, and instructed PO Viera to issue § 87(2)(b) a summons instead of taking him to the stationhouse so the officers could continue to canvass the area for the actual perpetrator of the firearm job (Board Review 16).

Criminal Summons § 87(2)(b) was issued to § 87(2)(b) for disorderly conduct, subsection one, for acting in a violent and threatening manner towards the officers with an intent to cause disruption. Under the statements section, it is noted that § 87(2)(b) stated, “Fuck you. I don’t have a fucking gun” (Board Review 27).

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he engages in fighting, violent, tumultuous, or threatening behavior. N.Y.S. Penal Law, Section 240.20. A person is guilty of disorderly conduct only when the situation extends beyond the exchange between the immediate disputants and becomes a potential or immediate public problem. People v. Baker, 20 N.Y.3d 354 (2013). The mere expression that an individual is upset by the police – even when uttered in a loud voice – cannot constitute a disorderly conduct offense. People v. Square, 872 N.Y.S.2d 693 (2008) (Board Reviews 23, 24, and 26).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

#### **Mediation, Civil, and Criminal Histories**

- This case was not suitable for mediation due to both § 87(2)(b) and § 87(2)(b)'s civil lawsuit.
- According to Office of Court Administration (OCA) records, § 87(2)(b) does not have a history of criminal convictions in New York City within the past ten years (Board Review 31).
- § 87(2)(b)
- § 87(2)(b) has filed a Notice of Claim against the City of New York as a result of this incident, claiming both physical and mental assault, battery, and harassment, and is claiming \$5,000,000 as redress. As of January 12, 2018, there has not been a 50H hearing scheduled (Board Review 33).
- § 87(2)(b) has filed a Notice of Claim against the City of New York as a result of this incident, claiming false arrest, physical and mental assault, and battery. § 87(2)(b) is claiming \$5,000,000 as redress. As of January 12, 2018, there has not been a 50H hearing scheduled (Board Review 34).

#### **Civilian and Subject Officer CCRB Histories**

- This is both § 87(2)(b)'s and § 87(2)(b)'s first CCRB complaint (Board Reviews 25 and 35).
- PO Viera has been a member of the NYPD for ten years. PO Viera has been the subject of 17 prior allegations stemming from ten cases, as well as nine subsequent allegations from Case #201708090, which is currently under investigation. There have been no substantiated allegations against PO Viera, § 87(2)(g)
- PO Khitab has been a member of the NYPD for five years. PO Khitab has been the subject of 14 prior allegations stemming from five cases. There have been no

substantiated allegations against PO Khitab, § 87(2)(g)

- PO Craig has been a member of the NYPD for ten years. PO Craig has been the subject of 30 other allegations stemming from 14 cases, including four prior frisk allegations and six prior force allegations. There has been one substantiated frisk allegation from Case #201201580, in which the CCRB recommended charges. PO Craig ultimately received instructions from the NYPD.
- PO Rosiello has been a member of the NYPD for six years. PO Rosiello has been the subject of four prior allegations stemming from four cases. There have been no substantiated allegations against PO Rosiello, § 87(2)(g)
- Sgt. Patel has been a member of the NYPD for 12 years. Sgt. Patel has been the subject of 15 prior allegations stemming from seven cases. There have been no substantiated allegations against Sgt. Patel, § 87(2)(g)

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Squad No.: 13

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date